IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(1) Civil Application No.1043 of 2007
in
First Appeal No.1500 of 2006

1. Sadhana Dhanaji Ghadge
and others ..Applicants
Vs.

1,.Executive Engineer & Ors. ..Respondents

Shri Dilip Bodake for applicants.
Ms.A.R.S.Baxi for respondents.

(2) Civil Application No.3143 of 2006
in
First Appeal No.1500 of 2006

1. Executive Engineer & Ors. ..Applicants

vs.

1. Sadhana Dhanaji Ghadge & Ors. ..Respondents

Ms.A.R.S.Baxi for applicants.
Shri Dilip Bodake for respondents.

CORAM: S.B.MHASE &
Smt.NISHITA MHATRE JJ.
21st February, 2007

P.C.

1. Heard.

2. This Civil Application No.1043 of 2007 is for withdrawal of the amount. Leave to amend.

3. Ms.Baxi for the original appellant has stated that the amount of Rs.27,00,270/- has been deposited in compliance of the order of this Court. Shri Bodake, learned Counsel for

applicants, submitted that this is an amount of compensation for the death of husband of applicant no.1 and as she is looking after the applicant nos. 2 and 3 who are minors and, therefore, the amount may be released. He further submitted that the accident is admitted and income is also admitted. Only dispute is about the multiplier and, therefore, he submitted that multiplier of 25 taken by the Trial Court is proper and, therefore, the total amount of Rs.27,00,270/- be released in favour of the applicants. Ms.Baxi who appears for the original appellants/respondents submitted that the multiplier has been wrongly applied. The age of the deceased was 32 and, therefore, the multiplier of 12 should have been accepted and to that extent the amount may be released. We presently do not desire to enter into the merits of the case but what we prima facie find that in such a situation the chart shown in the Motor Vehicles Act shows the multiplier of 17 when the deceased is between 30 to 35 years of age and if that is taken into consideration it is definitely higher than 12 as suggested by the learned Counsel for the appellants and thereby the amount payable may

exceed more than 50%. However, taking over all situation and circumstances on record into consideration we are in favour of releasing 50% amount in favour of the applicant without any surety. We further find that applicant nos. 2 and 3 are minor and their interest will have to be protected. Therefore, in respect of 50% amount which is to be released in favour of the appellants, we find it appropriate that only 1/3rd portion of 50% amount shall be released in favour of applicant no.1 without any surety and remaining 2/3rd of 50% of the amount shall be kept in the name of respondent nos. 2 and 3 till they attain the age of majority. However, during the period they attain majority they will be entitled to receive interest on the said amount on six monthly basis.

4. So far as remaining 50% amount is concerned, we also find it appropriate that the applicant may withdraw the said amount on furnishing bank guarantee. However, if the said amount is claimed by the applicants on furnishing bank guarantee then out of the said amount also 2/3 amount shall be kept in the

name of applicant nos. 2 and 3 and interest on the said amount shall be paid on six monthly basis to applicant no.1 for and on behalf of applicant nos. 2 and 3. In case the applicants are not in a position to give the bank guarantee then we find it appropriate that the said amount shall be deposited in any Nationalised Bank with an arrangement of making payment of interest over the said amount to the applicants every six months. We, therefore, pass the following order.

5. The Trial Court is hereby directed that out of the amount of Rs.27,00,270/- 50% amount be released in favour of applicants without any surety. We further direct that out of this 50% amount which is released in favour of applicant nos. 1 to 3 without surety applicant no.1 shall deposit 2/3rd amount in the name of applicant nos. 2 and 3 with any Nationalised Bank till they attain the age of majority and the said Nationalised Bank shall make payment of interest over the said amount to applicant no.1 every six months.

6. We direct the Trial Court to release the remaining 50% amount in favour of applicant

nos. 1 to 3 on their furnishing the Bank Guarantee. If the said amount is withdrawn by applicant nos. 1 to 3 on furnishing bank guarantee then applicant no.1 shall deposit 2/3rd of the said 50% amount in any Nationalised Bank in the name of applicant nos. 2 and 3 and the Nationalised Bank shall make payment of interest to applicant no.1 of the said amount every six months. If applicant nos. 1 to 3 failed to withdraw or could not withdraw remaining 50% amount after furnishing the bank guarantee then in that eventuality the Trial Court shall deposit the remaining 50% amount with any Nationalised Bank initially for a period of 3 years with an arrangement of payment of six monthly interest being paid to applicant no.1 for herself and for minors. If pending appeal is not disposed of within a period of 3 years then the Trial Court shall go on depositing the said 50% amount on year to year basis till final disposal of the appeal and in that eventuality shall continue to make payment of interest every six months to applicant no.1 and for applicant nos. 2 and 3. With these directions civil applications are disposed of.

(Smt.NISHITA MHATRE J.) **(S.B.MHASE J.)**